

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

OCT 13 2015

Clerk, U.S. District Court
District Of Montana
Missoula

KERMIT POULSON,

Petitioner,

vs.

LEROY KIRKEGARD, WARDEN;
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

CV 15-15-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations in this case on May 6, 2015, recommending that Poulson's petition be dismissed for failure to exhaust state remedies. Poulson timely objected to the Findings and Recommendations and so the Court will conduct *de novo* review of the record. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendations not specifically objected to will be reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). Since the parties are familiar with the facts of this case, they will only be repeated below as necessary to explain the Court's order. For the

reasons listed below, the Court adopts Judge Lynch's Findings and Recommendations in full.

Petitioner objects to Judge Lynch's finding that his habeas petition was filed prematurely, stating that the "out of time" filing was due to his autism. (Doc. 8-1.) Petitioner then appears to object to the dismissal of defendants in his separate case before this Court, *Poulson v. Attorney General of the State of Montana, et al.*, CV-14-185-M-DLC-JCL. Any objections related to his separate case will not be addressed here.

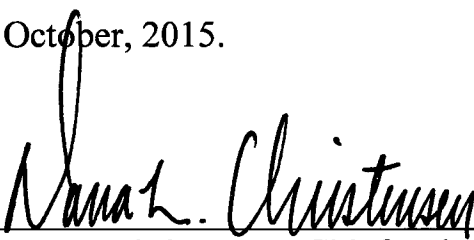
To the extent Petitioner objects to dismissal of his habeas petition for failure to exhaust his state remedies, his autism does not cure the failure to exhaust. Petitioner must exhaust available state judicial remedies with respect to each claim he raises before a federal court may entertain his petition for writ of habeas corpus. 28 U.S.C. 2254(b)(1)(A); *Rose v. Lundy*, 455 U.S. 509, 522 (1982). Petitioner has two appeals pending before the Montana Supreme Court: *State v. Poulson*, No. DA 14-340 and *State v. Poulson*, No. DA 14-341. Review of the Montana Supreme Court register shows that both cases are still pending as of the date of this Order.

There being no clear error in Judge Lynch's remaining Findings and Recommendations,

IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 7) are ADOPTED IN FULL. Poulson's petition (Doc. 1) is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Clerk of Court shall enter, by separate document, a judgment of dismissal. A certificate of appealability is DENIED.

DATED this 12th day of October, 2015.



Dana L. Christensen, Chief Judge
United States District Court